

In The Matter Of:
Hodell-Natco Industries, Inc. v.
SAP America, Inc., et al.

Daniel J. Lowery
February 8, 2012

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Min-U-Scripts with Word Index

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

HODELL-NATCO) Case No. 1:08 CV 2755
INDUSTRIES, INC.,)
) Judge: Lesley Wells
Plaintiff,) Magistrate Judge:
) Greg White
vs.)
) VOLUME I
SAP AMERICA, INC., et)
al.,)
)
Defendants.)

THE VIDEOCONFERENCE DEPOSITION OF DANIEL J. LOWERY

DATE: Wednesday, February 8, 2012

TIME: 3:48 p.m.

PLACE: Reminger & Reminger
1400 Midland Building
101 Prospect Avenue, West
Cleveland, Ohio 44115

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1 there was a development of an In-Flight for
2 SAP Business One?

3 A. We called that In-Flight
4 Enterprise.

5 Q. Okay. Was it designed to
6 accomplish the same end goal for customers
7 that were using SAP Business One, as it was
8 accomplishing for FACTS?

9 A. Yes.

10 Q. And what was that?

11 A. Well, it was a -- a specialty for
12 the fastener industry, although Dale sold it
13 to nonfastener companies as well, because it
14 had -- he had developed some strong inventory,
15 management techniques and things, but he had
16 developed certain functionality in it that was
17 specific to the fasteners, like secondary
18 processing, you send bolts out to have them
19 chromed. I don't know if that's an accurate,
20 you know, you got to track those while they're
21 out there, and then they become a different
22 part number sort of.

23 Q. Okay.

24 A. You know, there are just
25 peculiarities in the fastener industry that

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1 that product took care of.

2 SAP came along, and the biggest benefit
3 we saw in SAP was it had a full relational
4 database, which means once your data is in
5 there, you can come at it, get reports many
6 different ways, without writing reports from
7 scratch all the time.

8 Q. Okay.

9 A. Very powerful, very powerful. So
10 we felt that, when we put the deal together
11 with Otto and Kevin, and you know, we say,
12 okay, let's write a glove fit and do it from
13 scratch, and then we can take it to the next
14 level and take over the world.

15 Q. So is it fair to say that while
16 IBiS had a version of In-Flight running for
17 FACTS, that wasn't usable for integration into
18 Business One?

19 A. The intellectual knowledge was,
20 but written in a different language, different
21 -- you couldn't say just unplug it and plug
22 it. Is that where you're going with that?

23 Q. I'm sure you know a lot more
24 about how it works than me.

25 A. Not much. You couldn't --

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1 Q. It's different code. It's the
2 same --

3 A. Totally different.

4 Q. -- concept, but it's different
5 code?

6 A. You have to write from scratch on
7 SAP. There was no way to take anything, other
8 than the intellectual knowledge.

9 Q. Of what you wanted the end result
10 to be?

11 A. Of what you wanted it, right,
12 so --

13 Q. Okay.

14 A. -- total different programming,
15 everything.

16 Q. Do you know when LSi acquired
17 IBiS?

18 A. I believe so. May 2004.

19 Q. Was there a merger agreement, or
20 asset purchase agreement, or anything that was
21 drafted?

22 A. Yes.

23 Q. Do you know if that's been
24 produced?

25 MR. HULME: Yeah.

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1 MR. LAMBERT: It has?

2 MR. HULME: That for sure has been.

3 MR. LAMBERT: Okay.

4 THE WITNESS: Then yes.

5 BY MR. LAMBERT:

6 Q. Was LSi an SAP partner at the
7 time?

8 MR. STAR: Objection to form. You can
9 answer.

10 THE WITNESS: Huh?

11 MR. STAR: I'm just stating an
12 objection. You can go ahead and answer.

13 MR. HULME: Unless I tell you don't
14 answer, don't answer -- then answer
15 everything.

16 THE WITNESS: Okay.

17 MR. HULME: If I say don't answer it,
18 then don't answer it.

19 THE WITNESS: Was LSi a partner when I
20 bought -- an SAP partner when I bought IBIS?

21 BY MR. LAMBERT:

22 Q. Correct.

23 A. Yes, I believe so. Yes. I
24 believe I was -- I signed partner agreements
25 December 2003? I can't talk to him. I think

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1 I'm right. December 2003 was when I became a
2 partner.

3 Q. Was IBiS an SAP partner when you
4 -- when LSi acquired IBiS?

5 A. I believe so.

6 Q. Was LSi selling Business One at
7 the time you acquired IBiS?

8 A. Had not sold any, but yes, we
9 were in the process of ramping up.

10 Q. Okay. Is it fair to say that, I
11 guess, the primary objective in acquiring IBiS
12 was to partner with Mr. Van Leeuwen and his
13 entity to build this In-Flight vertical
14 integration to use for Business One?

15 A. Certainly important. Just as
16 important though was the install base that was
17 already in place for the FACTS side too.

18 Q. Okay.

19 A. That was a revenue stream that I
20 was buying. Maintenance that the customers
21 paid and all that sort of thing, so it just
22 was a -- a beautiful fit. It was just a great
23 fit, but yes, when the SAP thing rolled out,
24 that was a -- yeah, we thought the whole world
25 was going to be ours.

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1 A. That's exactly correct.

2 Q. Had they -- had they penetrated
3 that market at the time you first got
4 involved?

5 A. They were just starting this
6 program. This program was brand new. I think
7 in 2003. I mean, I was one of the first guys
8 to sign up. Dale was right there with me. He
9 -- and we had done that independently. Yeah.
10 It was just fresh. I mean, SAP had bought
11 this package from Israel, and they were going
12 to roll that out in the United States, so we
13 were -- we jumped at that chance.

14 THE REPORTER: We jumped at the?

15 THE WITNESS: We jumped at that chance.

16 THE REPORTER: Okay.

17 THE WITNESS: After talking to --

18 Dan Kraus was the primary seller of this
19 relationship, so after you talk to him and
20 heard his sales pitch, you just -- you just
21 knew it was going to be good.

22 BY MR. LAMBERT:

23 Q. I have gathered from what you
24 have just said, that you didn't seek SAP out,
25 they sought you out?

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1 SAP for -- have any sales goals that LSi was
2 to meet for SAP Business One?

3 A. Well, they had a sales award
4 trip, if you achieved a certain amount of
5 revenue, and a certain amount of new accounts.
6 Initially they were -- everybody was measured
7 by new accounts, and then as it sort of
8 matured a little bit, they wanted revenue. So
9 you -- they changed the target. That's how a
10 company sets their goals. Every company does
11 that.

12 Q. All right.

13 A. If you didn't meet your goals,
14 you just didn't go on the trip. They had a
15 top ten club trip that everybody tried to get
16 to.

17 Q. What was your understanding as an
18 SAP partner of what you were authorized to do
19 on behalf of SAP?

20 A. Well, find a company with needs
21 that could be met by SAP Business One. And
22 then, you know, normal selling to get into the
23 account, become one of the bidders, if they're
24 out to bid, learn their business, learn their
25 -- what they're needing, what their pain

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1 points are --

2 Q. What their --

3 A. -- presentation. You know, what
4 they're looking for. And then if SAP Business
5 One could meet those, you prepare a proposal
6 and present them.

7 Q. Okay.

8 A. So our job was to sell and
9 evangelize Business One.

10 Q. And to your knowledge, that was
11 with the express -- at the express
12 authorization and direction of SAP America,
13 Inc.?

14 A. Yes.

15 MR. STAR: Objection to form.

16 THE WITNESS: Well, yeah. Who else --
17 why else would I be doing it?

18 BY MR. LAMBERT:

19 Q. Did SAP authorize LSi to refer to
20 itself as an SAP business partner?

21 A. Yes.

22 Q. Did SAP encourage the use of that
23 term?

24 A. Yes.

25 Q. Why is that?

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1 A. Those letters carried weight, got
2 you in the door. You wanted your letterhead
3 to have SAP on it. Being an authorized
4 partner for SAP was prestigious.

5 Q. Were you authorized to use SAP's
6 logo on your letterhead?

7 A. Yes.

8 Q. Where did you get the actual logo
9 from to place on your letterhead?

10 A. They supplied it.

11 Q. Did they supply the letterhead,
12 or did they supply just a JPEG, a logo or
13 something to that --

14 A. Somehow -- I don't know if I knew
15 what a JPEG was back then, but -- but somehow
16 we got it. It was either an artwork or
17 something, but it was for the express purpose
18 of creating your letterhead.

19 Q. Okay. Did you see a benefit in
20 referring to LSi as an SAP partner?

21 A. Absolutely.

22 Q. And why is that?

23 A. Well, again, SAP is a very
24 prestigious three letter acronym. Just like
25 when I worked for IBM, you could always get in

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1 the door by having an IBM business card. Same
2 went for SAP.

3 Q. Was it your intent to create an
4 impression with potential customers of a
5 partnership between LSi and SAP for the
6 marketing and sale of Business One?

7 A. Oh, absolutely. That's what we
8 hoped that the kickoff, had it happened, was
9 going to do to, you know, blast us out into
10 the community, big bang kind of a theory. And
11 I mean, that would -- that would have been a
12 neat deal, but the whole thing was the
13 piggyback on SAP's credibility.

14 Q. It's fair to say that during the
15 sales process of Business One to Hodell, you
16 made -- you, or Mr. Van Leeuwen, or people
17 associated with your entities, made certain
18 statements to Hodell about what the software,
19 Business One software could or could not do,
20 correct?

21 A. Yes.

22 Q. To your knowledge, is there --
23 would there have been any reason for Hodell to
24 think that the statements that LSi or IBiS
25 were making were not those, also those of SAP?

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1 A. I didn't hear that last part.

2 Q. Would there have been -- during
3 the sales process, would there have been any
4 reason for Hodell to know, or to think, that
5 the statements relating to the software's
6 capacity being made by LSi or IBiS were not
7 also those of SAP?

8 A. No.

9 (Whereupon, Exhibit 30 was marked for
10 identification.)

11 MR. LAMBERT: I see everyone else with
12 a copy.

13 BY MR. LAMBERT:

14 Q. The court reporter has handed you
15 what's been marked as Exhibit 30. If you
16 could take a look at that and let me know when
17 you're finished.

18 A. Okay.

19 MR. LAMBERT: That's for you. You can
20 have that.

21 MR. OTTO REIDL: I'm sorry. I thought
22 it was the court reporter's. I got that.

23 THE WITNESS: Okay.

24 BY MR. LAMBERT:

25 Q. Finished?

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1 A. In my head, it was \$200 million
2 in revenue on down. But there -- you know,
3 show me the customer, and I'll show you
4 whether it's an SMB, is what it boiled down
5 to. If you walked into a place, and they
6 might be doing \$500 million a year, but only
7 had 50 employees, that probably fell under the
8 B1 space, if that's possible.

9 Q. Okay. If you turn to page 8 of
10 that agreement.

11 A. Uh-huh.

12 Q. The Bate stamp at the bottom
13 right-hand corner is LSI-23.

14 A. Okay, what was it again? Where
15 we going?

16 Q. LSI-23.

17 A. Okay.

18 Q. I'm looking at Section 2.10.

19 A. All right.

20 Q. Titled Authorized Extensions and
21 Restrictions of Ownership and Support of
22 Extensions. Follow me?

23 A. I see what you're reading.

24 Q. Okay.

25 A. Do you want me to read that

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1 thing?

2 Q. No. I mean, if you need to to
3 answer my question, but --

4 A. What --

5 Q. -- my question is, also in this
6 agreement, SAP authorized LSi to develop
7 extensions for add-ons to Business One,
8 correct?

9 A. Yes.

10 Q. And -- and is that what In-Flight
11 Enterprise was?

12 A. And that was what?

13 Q. Is that the same thing as what
14 In-Flight Enterprise was --

15 A. Yes.

16 Q. -- an extension or add-on?

17 A. Yes.

18 Q. That's what they're referring to
19 in Section 2.10, correct?

20 A. Correct.

21 Q. And --

22 A. You have certain requirements,
23 yes, but once you do these things here, you
24 have to execute the SDK agreement and all that
25 sort of thing.

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1 Q. Well, my question is, I guess,
2 more general. Did SA -- in order for you to
3 be authorized to develop an extension like
4 In-Flight Enterprise, which I'll refer to as
5 IFE sometimes, did you have to get SAP's
6 approval to do so before you could go into
7 development?

8 A. Yes, by those requirements right
9 there.

10 Q. Okay. On the next page, there is
11 an -- under Section 4, Marketing?

12 A. Uh-huh.

13 Q. 4.3, let's see, to me required
14 LSi to maintain customer leads in a system
15 maintained by SAP.

16 A. Okay.

17 Q. Did LSi participate in -- in
18 maintaining its sales leads in an
19 SAP-maintained database?

20 A. To my knowledge.

21 Q. Who was responsible for reporting
22 those sales leads to SAP for LSi?

23 A. My salesman, my SAP salesman,
24 Tim Lowe.

25 Q. Was Tim Lowe a -- the salesman

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1 would be owned and controlled by SAP?

2 A. I would say only in -- if I
3 defaulted, and they had to bail me out, or
4 something like that, it would flip over to
5 that, but I don't know. I just don't know.

6 Q. Okay.

7 A. I'm sorry. Because this gets
8 into some -- and every software manufacturer
9 handles this differently, so I'm a little
10 confused as to it.

11 Q. Can you turn to Section 6.4?

12 A. Okay.

13 Q. Take a look at that and let me
14 know when you're finished.

15 A. Okay.

16 Q. Section 6.4 uses the term
17 extension. To your understanding, is -- was
18 In-Flight Enterprise an extension as it's
19 being used in here?

20 A. Yes. To my understanding, yes.

21 Q. Okay. I want to focus on the
22 following statement in Section 6.4, which
23 reads, "All extensions developed by licensee
24 hereunder shall be subject to the prior
25 approval and certification by SAP, in

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1 accordance with SAP's (or applicable SAP
2 affiliated companies) then current interface
3 and/or complimentary software certification
4 process."

5 Did I read that correctly?

6 A. Yes.

7 Q. My interpretation of that, and
8 correct me if yours is different, is that SAP,
9 pursuant to your agreement with SAP, SAP had
10 to approve and sign off on the In-Flight
11 Enterprise software for it to be implemented
12 at a customer's location?

13 A. When you developed, let me just,
14 programs, add-on programs, you had to use the
15 SDK toolkit.

16 Q. Okay.

17 A. Once you developed using that, as
18 I understood it, then that was the
19 certification process.

20 Q. Okay. Well, can you --

21 A. I don't remember seeing a piece
22 of paper signed by SAP saying you're now
23 certified to do this or that, but I --

24 Q. Well, let's ask a more basic
25 question. Did SAP, at any point in time,

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1 review IFE as it was being developed? And by
2 review, I mean look at the code and see how
3 it's being written?

4 A. Well, let me answer it I know on
5 the very front end, when Dale first started
6 architecting this, I mean, everything was back
7 and forth with SAP, technical people that they
8 talked to at that time, as to what is the best
9 language to use, what is the best approach to
10 use.

11 Q. With regard to In-Flight
12 specifically?

13 A. With regard to the In-Flight
14 development.

15 Q. Do you know who they were
16 interfacing with at SAP?

17 A. Eddie Neveux, I know, Dan Kraus,
18 Geoff Ashley was in it. I mean, it was lots
19 and lots of consults. So when Dale locked in
20 on C++, because we had to know what type of
21 person to hire. Joe Guagenti, you'll see his
22 name, he was our lead programmer, our lead
23 technical person, and he was a -- we had to
24 find the guy with the skills to write this.
25 This was a big project. So lots of

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1 interaction with SAP on the front end. Did
2 they look at the code?

3 Q. Let me narrow down the time frame
4 too, because I know they eventually, someone
5 at SAP, or hired by SAP, eventually did look
6 at In-Flight code, correct?

7 A. Yes.

8 Q. I'm talking about before it was
9 -- before Hodell went live, did anyone at SAP
10 ever review the In-Flight code?

11 A. I mean, I remember Joe saying he
12 was sending sample codes to SAP, getting --
13 does this look good, does this look good, that
14 type of thing. Who Joe was talking to? Joe
15 was technical, so I'm sure Eddie Neveux was
16 involved in it. I mean, he was kind of the
17 technical guy. Another fellow was Ralph
18 Mehnert something or other.

19 Q. Ralph Mehnert-Meland?

20 A. Yes.

21 Q. Hyphenated name?

22 A. Hyphenated name.

23 Q. This was during the development
24 of In-Flight Enterprise before it was
25 installed at Hodell and before Hodell went

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1 Q. Okay.

2 MR. LAMBERT: Can we go off the record?

3 (Whereupon, a brief off-the-record
4 discussion was held at 6:26.)

5 (Whereupon, Exhibit 36 was marked for
6 identification.)

7 BY MR. LAMBERT:

8 Q. For the record, we have taken the
9 last page of Exhibit 35, upon realization it's
10 not part of Exhibit 35, and made it
11 Exhibit 36. The Bates label of that document
12 is LSI-430.

13 Mr. Lowery, is this your handwriting up
14 at the top, 2004, two thousand -- or -5?

15 A. Yes.

16 Q. Why did you put that on there?

17 A. Preparation for this meeting
18 today.

19 Q. In preparation for this
20 deposition?

21 A. Yeah. Well, not this deposition,
22 but the case. I was looking for examples of
23 where they referenced how many users or
24 employees in this case.

25 Q. So is it fair to say that 2004-5

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1 is on here because it's your belief that you
2 -- this is information you had in your
3 possession in 2004 or 2005?

4 A. When I received this, yeah.

5 Q. Okay. And there is a -- some
6 lines and a star next to some text.

7 A. That's my stars.

8 Q. Okay. Why did you highlight that
9 area?

10 A. Because it was -- it mentioned 5
11 employees or 500.

12 Q. Why is that important to you?

13 A. Well, again, if -- if it's --
14 this was in preparation for this lawsuit. I
15 was looking for ammunition that says, hey, we
16 were always told this thing had plenty of
17 horsepower. This -- this piece of paper is
18 one example of that.

19 Q. Well, why is -- why is 5 to 500
20 employees important?

21 A. Well, again, to me, that's users.

22 Q. Okay.

23 A. And when --

24 Q. Is it because that --

25 A. We're going to plow through a lot

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1 of emails here tomorrow that is going to say
2 you are tapping out at 120 users, and that was
3 never the objective.

4 Q. Is it fair to say that you were
5 looking for statements that had made, had been
6 made by SAP referencing 5 to 500 employees as
7 backup for statements that you made to LSi,
8 saying that the software -- or statements that
9 you made to Hodell, saying that the software
10 could support 5 to 500 employees?

11 A. Yes.

12 Q. Okay. How about this will be the
13 last one for today.

14 (Whereupon, Exhibit 37 was marked for
15 identification.)

16 MR. OTTO REIDL: I didn't want to give
17 it to you upside down. Sorry

18 THE REPORTER: Oh, okay.

19 MR. OTTO REIDL: I didn't know where
20 the top was. Still don't.

21 BY MR. LAMBERT:

22 Q. The court reporter has handed you
23 what's been marked as Exhibit 36. Can you
24 review that --

25 MR. HULME: Seven.

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1 collaterals, and I'm not sure back then we had
2 the ability to download them, or if they just
3 mailed them and we ordered them. I mean, this
4 is the type of thing you'd order a hundred of
5 and mail them out.

6 Q. Is it fair to say that this is
7 information that SAP provided to you --

8 A. Correct.

9 Q. -- with the intention of it being
10 provided to potential customers?

11 A. Correct.

12 Q. Is it fair to say you don't
13 recall the specific person you received it
14 from?

15 A. I do not.

16 Q. Turn to the page that is labeled
17 LSI-422 at the bottom.

18 A. (Doing as indicated.) Okay.

19 Q. There is some text with a bracket
20 and a star next to it.

21 A. Uh-huh.

22 Q. Can you read that for me?

23 A. SAP One, Business One, is ideally
24 suited for companies with revenues up to 100
25 million, or with up to 250 employees.

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1 going to Business One. So I would say this is
2 probably not part of that, but --

3 Q. Okay. Well, let's mark that as
4 Exhibit 38.

5 (Whereupon, Exhibit 38 was marked for
6 identification.)

7 BY MR. LAMBERT:

8 Q. For the record, Exhibit 38, we
9 have taken out of Exhibit 37. It's a one-page
10 document bearing the Bates label LSI-425.
11 Do you recall seeing this document before?

12 A. Yes.

13 Q. Is that your -- there is some
14 handwriting, or a line drawn on this text in
15 the left-hand column.

16 A. Correct.

17 Q. Was that put there by you?

18 A. Yes.

19 Q. Why?

20 A. Again, 5 to 500 employees.

21 Probably did that to highlight that on this
22 document, in preparation for this lawsuit.

23 Q. Again, as backup to you for the
24 reason that you told Hodell that -- that the
25 software could support 5 to 500 employees?

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1 A. Right.

2 Q. Right? I'm sorry, I didn't hear
3 you.

4 A. Well, I think the number they use
5 is 300 users or something.

6 Q. Okay.

7 A. But yeah, I mean, this was common
8 knowledge, yes.

9 Q. It's a -- there is a reference to
10 an ROI calculator.

11 A. Uh-huh.

12 Q. Is it your understanding that to
13 a -- to a company purchasing SAP Business One,
14 gauging its return on that investment would be
15 important to the company?

16 A. Yes.

17 Q. Okay.

18 MR. LAMBERT: Off the record.

19 (Whereupon, at 6:41, the deposition was
20 continued until the following morning.)
21
22
23
24
25

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1 Q. And he says, about halfway
2 through the first paragraph, things are
3 particularly dire in Reno and Houston. We've
4 lost one sales employee in Reno, due to the
5 strain. He had been with the company for five
6 plus years, correct?

7 A. Correct. That's what it says.

8 Q. Passing along information to you
9 that Hodell's beginning to lose key employees
10 based upon software performance, correct?

11 A. That's what he says.

12 Q. Did you pass that information
13 along to SAP?

14 A. Did I pass that along to who,
15 SAP?

16 Q. Yes.

17 A. Yes.

18 (Whereupon, Exhibit 69 was marked for
19 identification.)

20 THE WITNESS: To Sotnick. Looks like
21 you start from the last page in this one.
22 Okay. So I started this whole thing with an
23 email to Udi Ziv, copy everybody, told him
24 what we did, says why aren't they fixing
25 performance. So I must have found out that

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1 Udi Ziv was important in this whole thing.
2 Okay. And then the next thing is, Kraus to
3 Udi Ziv, and any help you can give Lowery is
4 appreciated. Dirk's team is currently working
5 with LSi and Accellos, which is Radio Beacon.
6 Customer is at the large end of the B1 target
7 and was sold with the understanding that a
8 complete test -- so ah, so here he goes. Here
9 is Kraus. Unfortunately, the partner only
10 tested the --

11 THE REPORTER: Wait. Wait. Wait. If
12 you're going to say it, I need to hear you.

13 THE WITNESS: Well, he said, customer
14 is at the large end -- this is Dan Kraus
15 talking to Udi Ziv. This is in April. The
16 customer is at the large end of the B1 target
17 and was sold with the understanding that
18 complete testing would be done prior to go
19 live. Unfortunately, the partner only tested
20 the functionality and never did a load
21 performance. It is the load that is hurting
22 us here, due to the SQL connections and table
23 locks. If we don't get this resolved, we will
24 likely end up taking a return from the
25 customer and putting the partner out of

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1 business. Well, he was right there. I think
2 there is some ideas on the table with Daniel
3 or Dirk's team, so again, we'd appreciate any
4 -- by the way, McDermott's email -- email
5 address for Bill McDermott in the original
6 message is invalid, so I think you all --

7 And then Udi replies, I honestly do not
8 know what to tell you. Someone had told --
9 someone has sold to the wrong customer, which
10 is way above any sane B1 sweet spot. 120
11 users. And obviously they're experiencing
12 severe performance issues. I cannot commit to
13 resolving this.

14 I don't think I've ever seen that one
15 before. Okay. Why -- did it take the
16 customers two and a half years to get
17 implemented or did they start late? Kraus
18 says to Udi, this customer was sold in 2004,
19 before there was any announced or understood
20 issue.

21 MR. STAR: Is there an actual question
22 pending?

23 THE WITNESS: Yes. Oh.

24 BY MR. LAMBERT:

25 Q. There isn't, but I was --

1 A. Sure. Go ahead. You want to ask
2 a question?

3 Q. I was eventually going to. I was
4 letting you review it as much -- if you want
5 to first.

6 A. Well, I was just reading it.

7 Q. Let me know when you're ready.

8 A. I don't believe I have seen any
9 of this. This is new stuff. Okay. All
10 right.

11 Q. I wanted to ask you about your
12 email to Udi Ziv, that I guess started this
13 whole chain.

14 A. Yep.

15 Q. Why were you emailing Mr. Ziv at
16 this point?

17 A. Try to break some glass for
18 Hodell, get some people involved. Where we at
19 here? April 11th?

20 Q. Correct.

21 A. I must have been frustrated that
22 nothing was happening. I wanted Udi Ziv -- I
23 must have found out he was important in this
24 whole thing.

25 Q. Do you know how he was important,

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1 because I haven't seen a title for him
2 anywhere?

3 A. Well, he was important enough to
4 know, or he can clearly state this never
5 should have been sold.

6 Q. You just don't know his job
7 title?

8 A. I don't know what his job title
9 is, but -- probably, maybe product manager
10 something, I'm guessing, over in Israel.

11 Q. But he was in-house with SAP,
12 correct?

13 A. He was what?

14 Q. He was in-house with SAP,
15 correct?

16 A. Does that mean employee of?

17 Q. Yeah.

18 A. Yeah.

19 Q. Told him that Hodell was running
20 on 120 users, correct?

21 A. Correct.

22 Q. I heard you reading some of the
23 information that he was telling or providing
24 to Dan Kraus in response to your email,
25 correct?

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1 A. Right.

2 Q. Was any of that information
3 communicated back to you?

4 A. No. These were internals, yeah.
5 These all came from SAP. I never saw these.
6 These would have been fun to have back then.

7 Q. Why is that?

8 A. Brought them over to Otto, and we
9 would have said, hey, what is going on? We
10 would have rattled the cages even more.

11 You see, what Kraus is trying to do now
12 -- okay. Udi says, this should have never
13 been sold, so Kraus, at this point, probably
14 says, I got to save my job. The only way to
15 do this --

16 Q. At this point -- at this point,
17 couldn't have Hodell rolled back to their old
18 system?

19 A. Had we known it, I don't know,
20 not without a lot of work, but that's an
21 interesting darn question. I don't know. I'd
22 like to sit down and ask Otto that offline or
23 something, but

24 Q. Well, do you recall it ever being
25 discussed whether Hodell should roll back to

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1 FACTS, rather than continue on Business One?

2 A. It's a very difficult thing to
3 do, I remember that, from a technical
4 standpoint.

5 Q. My question is --

6 A. Jon Woodrum would know the
7 answers. I mean, Kevin may know the answers,
8 but I don't know, but it was a very difficult
9 thing, I know that.

10 Q. But do you recall it being
11 discussed as an option?

12 A. I don't think so.

13 Q. Okay.

14 A. If it was, it was never -- I was
15 never in on it, where there is -- but had we
16 all known, had I known what a hard line
17 Udi Ziv took on an internal email right here,
18 that could have precipitated a meeting with
19 Hodell, and let's all talk and see what we
20 want to do. That's the first time anybody
21 ever said that. Hmm.

22 THE WITNESS: You got a copy of that
23 one?

24 MR. HULME: Uh-huh.

25 THE WITNESS: I mean, this is a very

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1 important email, in my eyes, that should --

2 MR. HULME: Wait for a question.

3 THE WITNESS: Huh?

4 MR. HULME: Wait for a question now.

5 THE WITNESS: Oh, okay. That we should
6 have seen. Okay.

7 MR. HULME: Green tag.

8 THE WITNESS: Okay. Let me continue
9 here. This has got me upset. Here we are in
10 April, the month after we went live, we got
11 the head guy, this Udi Ziv, whoever, you can
12 find his title, and he's saying this should
13 never have been sold? If we had known that at
14 that time, that would have been a very darn
15 interesting piece of information to have,
16 because we went on beating this thing for --
17 I'm thinking out loud here -- I mean, actively
18 trying to fix the problems well into December
19 of '07, I'm guessing. Because you sent me an
20 email in January saying you're going to go to
21 another software product. I'm thinking out
22 loud here. I mean, we were seriously trying
23 to get help, at least well into the late part
24 of '07. And here in April, probably the
25 product manager says this should never have

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1 been sold. That's -- that's beyond horrible.

2 BY MR. LAMBERT:

3 Q. Do you recall receiving a reply
4 from Mr. Ziv?

5 A. I don't know. I'm too pissed
6 right now. I don't know. I can probably tell
7 you. Give me like ten minutes on my computer.
8 Thousands and thousands of hours that we
9 continued to throw at this.

10 MR. HULME: Let's take a break.

11 THE WITNESS: You going to let me calm
12 down?

13 MR. HULME: Yeah.

14 THE WITNESS: Well, that just upset me.

15 MR. HULME: Well, I can tell.

16 (Whereupon, a break was taken from 1:50
17 until 1:52.)

18 MR. LAMBERT: Back on.

19 BY MR. LAMBERT:

20 Q. Mr. Lowery, has anyone ever told
21 you that the volume of records maintained by
22 Hodell exceeded any volume that had been
23 tested on Business One?

24 A. No.

25 Q. No one's ever told you that?

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1 A. You mean has anyone ever told me
2 that the volumes being tested -- are you going
3 back to my testing or something?

4 Q. No. I'm saying, has anyone ever
5 told you whether the amount of data maintained
6 by Hodel1 --

7 A. Exceeded?

8 Q. -- exceeded the amount of data
9 that had been tested as being supportable by
10 Business One?

11 A. Not until five minutes ago.

12 Q. Had anyone told you -- has anyone
13 ever told you that the number of users being
14 utilized by Hodel1 exceeded the amount that
15 had been tested for SAP Business One by SAP?

16 A. Prior to me reading that?

17 Q. Yes.

18 A. No.

19 Q. By that, you mean Exhibit 69,
20 correct?

21 A. Yes.

22 Q. Okay. When was the first time
23 you heard of a "sweet spot" for Business One?

24 A. The what? My ears are not the
25 best. You said when was the first time I